2025 INSC 478

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5131 OF 2025
(Arising out of SLP (C) No. 36 OF 2021)

R. NAGARAJ (DEAD) THROUGH LRs.
AND ANOTHER ... APPELLANTS

VERSUS

RAJMANI AND OTHERS … RESPONDENTS

J U D G M E N T

R. MAHADEVAN, J.

Leave granted.

2. This appeal is directed against the judgment and decree dated 17.02.2020 passed by the High Court of Judicature at Madras[1] in Second Appeal No.406 of 1998. By the impugned judgment, the High Court allowed the second appeal, thereby setting aside the judgment and decree passed by the Courts below, and remitting the matter to the trial Court for framing additional issues in respect of limitation. The trial Court was further directed to conduct the trial afresh on the aspect of whether the suit was barred by limitation, and to complete it within a period of six months.

[1] Hereinafter referred to as "the High Court"

3. The genesis of the litigation traces back to a joint Hindu family consisting of Rangappa Gowdar and his sons, Dasappa Gowdar and Samiappan. Originally, the suit bearing O.S.No.851 of 1965[2] had been filed by the wife and daughter of the said Samiappan *viz.*, Sunderammal and Vennila, who are Respondent Nos.6 and 7 herein, seeking maintenance against the said Samiappan and his father Rangappa Gowdar and brother Dasappa Gowdar. The suit came to be decreed on 26.08.1965 and the suit properties were attached for the maintenance amount in the execution proceedings initiated by the plaintiffs. During the pendency of the execution proceedings, the said Rangappa Gowdar and Dasappa Gowdar died and their legal heirs were brought on record. Through court auction, the suit 'A' schedule property was purchased by one Karivarada Gowdar and the sale was confirmed by issuing certificate dated 25.09.1970 in E.P.No.424 of 1969 in O.S.No.851 of 1965 by the Court of District Munsif, Coimbatore. Since the said Samiappan tried to encroach the suit 'A' schedule property, the said Karivarada Gowdar filed a suit *viz.*, O.S.No.1978 of 1972 for permanent injunction and the same came to be decreed on 11.06.1973. Subsequently, the suit 'A' schedule property was purchased by Respondent Nos.8 to 10 from the said Karivarada Gowdar and they also filed a suit in O.S.No.3390 of 1981 seeking permanent injunction, which came to be decreed on 24.07.1982. Thereafter, the suit 'A'

[2] Hereinafter referred to as "the first suit"

schedule property was purchased by Respondent No.11 and later-on, by Appellant Nos.1 and 2.

4. In the above background, Respondent Nos.1 to 3 who are the daughters and wife of Dasappa Gowdar, instituted a suit bearing O.S.No.257 of 1982[3] before the II Additional District Munsif, Coimbatore[4], to set aside the decree passed by the Court of District Munsif, Coimbatore in O.S.No.851 of 1965 and to partition the suit 'A' and 'C' schedule properties by metes and bounds in 12 equal parts and to allot the 5/12 shares to the plaintiffs and for permanent injunction restraining the subsequent purchasers from in any manner disturbing with the peaceful possession of the suit properties by the plaintiffs.

5. After trial, the suit was dismissed, by judgment dated 08.09.1994, against which, Respondent Nos.1 to 3 filed Appeal Suit bearing No.207 of 1994 before the Additional District Judge, Coimbatore[5]. By judgment dated 28.01.1997, the appeal suit came to be dismissed. Challenging the same, Respondent Nos.1 to 3 went on further appeal *viz*., S.A.No.406 of 1998, which was allowed by the High Court, by judgment dated 17.02.2020. Aggrieved by the same, the appellants,

[3] Hereinafter referred to as "the second suit"
[4] Hereinafter referred to as "the trial Court"
[5] Hereinafter referred to as "the First Appellate Court"

who are the subsequent purchasers of the suit 'A' schedule property, have preferred this appeal before us.

6. On 25.01.2021, when the matter was taken up for consideration, this Court passed the following order:

> *"Exemption from filing O.T. and c/c of the impugned order is granted.*
> *Issue notice.*
> *In the meantime, further proceedings in pursuance of the order dated 17.02.2020 passed by the High Court shall remain stayed."*

7. During the pendency of this appeal, Respondent Nos.1 and 2 have passed away, and their legal representatives have been brought on record and accordingly, the cause title has been amended. V*ide* order dated 21.10.2022 passed in Interlocutory Application No. 101397/2022, Respondent Nos. 4, 8, 9, 11, 14 and 18 to 21 have been deleted from the array of parties, since they are proforma parties, and they do not have any surviving interest in the suit property. *Vide* order dated 21.10.2022 passed in Interlocutory Application No.101402/2022, the appellants have been exempted from the requirement of substituting the legal representatives of deceased Respondent Nos.10 and 12. Despite the service of notice, none appeared on behalf of the other proforma respondents *viz.*, Respondent Nos.5 to 7, 13, 15, 16 and 17. Thus, Respondent Nos.1 to 3 are the only contesting parties.

8. Heard the learned counsel for the appellants and the learned counsel for the contesting Respondent Nos.1 to 3 and also perused the materials available on record.

9. The main contention of the learned counsel for the appellants is that Respondent Nos.1 to 3 had been arrayed as respondents / judgment debtors in the execution proceedings initiated in O.S.No.851 of 1965 and hence, they had the knowledge of the proceedings even prior to filing of the suit in O.S.No.257 of 1982. Since the second suit was filed after a period of 17 years, it was hopelessly barred by limitation. In such circumstances, the High Court ought not to have allowed the second appeal and remitted the matter to the trial Court for conducting trial afresh, on the aspect of limitation.

9.1. It is further submitted that the suit 'A' schedule property could no longer remain as joint family property, when the same was brought into court auction and the sale was confirmed and possession was also handed over to the auction purchaser. However, Respondent Nos.1 to 3 did not take any steps to set aside the said sale, but they conveniently filed the second suit bearing O.S. No. 257 of 1982 to set aside the decree dated 26.08.1965 passed in the first suit bearing O.S. No. 851 of 1965 without any subsisting legal right. Further, the documentary evidence clearly proved that Respondent Nos. 1 to 3 were aware of the execution proceedings and that, the courts below discussed the limitation point in detail

before dismissing the suit / appeal suit filed by Respondent Nos.1 to 3, and therefore, the necessity to frame an issue on limitation does not arise.

9.2. The learned counsel also pointed out that the suit was not dismissed solely on the ground of limitation, but on merits as well, observing that Respondent Nos. 1 to 3 herein are not entitled to any relief, since they had knowledge about the earlier suit.

9.3. It is further submitted that after admitting the second appeal, the High Court ought to have decided the question of law relating to limitation, instead of remitting the case to the trial Court, specially, after more than two decades from the inception of the Second Appeal. Further, according to the learned counsel, Respondent Nos. 1 to 3 herein, failed to approach the Court with clean hands and abused the process of law by filing such frivolous suit.

9.4. Thus, the learned counsel submitted that the suit was rightly dismissed by the trial Court as time-barred and the same was affirmed by the First Appellate Court. As such, the decision of the High Court to remand the matter for framing the issue of limitation and conducting trial afresh, is unwarranted and is liable to be set aside.

10. Per contra, the learned counsel for Respondent Nos.1 to 3 submitted that the High Court rightly allowed the second appeal filed by Respondent Nos. 1 to 3 and remitted the matter to the trial Court for fresh trial, after framing the issue

of limitation. According to the learned counsel, the said issue is a mixed question of fact and law; to decide the maintainability of the suit and without framing such question, the trial Court and the First Appellate Court ought not to have come to the conclusion that Respondent Nos.1 to 3 are not entitled to the relief to set aside the decree passed in the first suit *viz*., O.S. No. 851 of 1965 and to partition the suit 'A' and 'C' schedule properties by metes and bounds in 12 equal parts and to allot the 5/12 shares to Respondent Nos.1 to 3, and for a permanent injunction. In this regard, reliance was placed on the decision of this Court in *Vaish Aggarwal Panchayat v. Inder Kumar & Others*[6].

10.1. The learned counsel further submitted that the trial Court as well as the First Appellate Court without framing any issue, any pleadings, and without leading any evidence, rejected the relief sought by Respondent Nos.1 to 3 as barred by limitation. Therefore, the High Court rightly remanded the matter to the trial Court to frame a specific issue with regard to limitation and decide the matter afresh. Reliance was made to the decision of this court in *Ramesh B. Desai & Ors. v. Bipin Vadilal Mehta & Others*[7].

10.2. It is also submitted that the decree obtained in O.S. No. 851 of 1965 is an asseveration of fraud and collusion.

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[6] (2020) 12 SCC 809

[7] (2006) 5 SCC 638

10.3. With these submissions, the learned counsel prayed for dismissal of this appeal filed by the appellants.

11. Upon considering the rival submissions, the only question that arises for our consideration is whether the High Court was justified in remanding the matter to the trial Court for a fresh trial on the issue of limitation, despite the existence of concurrent findings, when Section 100 of the Code of Civil Procedure, 1908[8] empowered the High Court to decide the matter.

12. It is a well settled legal position that Section 100 CPC confers jurisdiction on the High Court to entertain a second appeal, only when it is satisfied that the case involves a substantial question of law. For better appreciation, the said provision is extracted below:

> *"[9][100. Second appeal.—(1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.*
> *(2) An appeal may lie under this section from an appellate decree passed ex parte.*
> *(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.*
> *(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.*
> *(5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:*

[8] For short, "CPC"
[9] Substituted by Act 104 of 1976, sec.37, for section 100 (w.e.f. 1-2-1977)

> *Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it, if it is satisfied that the case involves such question.]"*

Thus, sub-section (1) of Section 100 says that the second appeal would be entertained by the High Court only if the High Court is satisfied that the case involves a substantial question of law. Sub-section (3) makes it obligatory upon the appellant to precisely state in memo of appeal the "substantial question of law" involved in the appeal. Sub-section (4) provides that where the High Court is satisfied that any substantial question of law is involved in the case, it shall formulate that question. In other words, once the High Court is satisfied after hearing the appellant or his counsel, as the case may be, that the appeal involves a substantial question of law, it has to formulate that question and then direct issuance of notice to the respondent of the memo of appeal along with the question of law framed by the High Court. Sub-section (5) provides that the appeal shall be heard only on the question formulated by the High Court under sub-section (4). In other words, the jurisdiction of the High Court to decide the second appeal is confined only to the question framed by the High Court under sub-section (4). The respondent, however, at the time of hearing of the appeal is given a right under sub-section (5) to raise an objection that the question framed by the High Court under sub-section (4) does not involve in the appeal. The reason for giving this right to the respondent for raising such objection at the time of hearing is because the High Court frames the question at the stage of

admission, which is prior to issuance of the notice of appeal to the respondent. In other words, the question is framed *ex parte* and, therefore, sub-section (5) enables him to raise such objection at the time of hearing that the question framed does not arise in the appeal. The proviso to sub-section (5), however, also recognizes the power of the High Court to hear the appeal on any other substantial question of law which was not initially framed by the High Court under sub-section (4). However, this power can be exercised by the High Court only after assigning the reasons for framing such additional question of law at the time of hearing of the appeal [See: *Surat Singh (Dead) v. Siri Bhagwan & Others (2018) 4 SCC 562*].

12.1. Furthermore, this Court has consistently underscored that under Section 100 CPC, the High Court possesses the authority to entertain second appeals strictly on substantial questions of law. Upon admitting such an appeal, the High Court is empowered to frame substantial questions and adjudicate them directly, without the necessity of remanding the matter to the trial court. This approach ensures judicial efficiency and prevents unnecessary prolongation of litigation. A few decisions are outlined below:

(i) Santosh Hazari v. Purushottam Tiwari (Deceased) by LRs[10]

> *"16. Reverting to the facts of the case at hand, prima facie we find the first appellate Court did not discharge the duty cast on it as a Court of first appeal. The*

[10] (2001) 3 SCC 179

High Court having noticed failure on the part of the appellant in not discharging the statutory obligation cast on him by sub-section (3) of Section 100 of the Code, on account of the substantial question of law involved in the appeal having not been stated, much less precisely, in the memorandum of second appeal, ordinarily an opportunity to frame such question should have been afforded to the appellant unless the deficiency was brought to the notice of the appellant previously by the High Court Registry or the court and yet the appellant had persisted in his default. That was not done. In our opinion, the following substantial question of law does arise as involved in the case and worth being heard by the High Court:-

"Whether on the pleadings and the material brought on record by the defendant, the first appellate Court was right in holding that the case of adverse possession was made out by the defendant and the suit filed by the plaintiff was liable to be dismissed as barred by time under Article 65 of the Limitation Act, 1963, more so when such finding was arrived at in reversal of the findings of the trial Court?"

17. The appeal is allowed. The case is remitted back to the High Court for hearing and deciding the second appeal afresh.

18. We make it clear that we have not expressed any opinion either way on any of the issues arising for decision in the case. We also make it clear that our framing the question of law involved in the appeal shall not take away the jurisdiction of the High Court vesting in it under proviso to sub-section (5) of Section 100 of the C.P.C. to formulate any other question of law involved in the case The second appeal shall be decided by the High Court uninfluenced by any of the observations made hereinabove which have been made solely to support our opinion that the appeal did not merit a summary dismissal by the High Court."

(ii) Surat Singh (supra)

"29. The scheme of Section 100 is that once the High Court is satisfied that the appeal involves a substantial question of law, such question shall have to be framed under sub-section (4) of Section 100. It is the framing of the question which empowers the High Court to finally decide the appeal in accordance with the procedure prescribed under sub-section (5). Both the requirements prescribed in sub-sections (4) and (5) are, therefore, mandatory and have to be followed in the manner prescribed therein. Indeed, as mentioned supra, the jurisdiction to decide the second appeal finally arises only after the substantial question of law is framed under sub-section (4). There may be a case and indeed there are cases where even after framing a substantial question of law, the same can be answered against the appellant. It is, however, done only after hearing the respondents under sub-section (5)."

(iii) Mehboob-Ur-Rehman (Dead) Through Lrs. V. Ahsanul Ghani[11]

> *"21. As per Section 100 CPC, the appeal would lie to the High Court from the decree passed in appeal by any Court subordinate only if the High Court is satisfied that the case involves a substantial question of law; such question is required to be stated in the Memorandum of Appeal; the High Court is required to formulate the question on being satisfied that the same is involved in the case; the appeal is to be heard on the question so formulated; and at the time of hearing, the respondent could urge that the case does not involve such a question. The proviso to sub-section (5) of Section 100 CPC makes it clear that the Court could hear the appeal on any other substantial question of law not formulated by it, but only after recording the reasons that the case involves such a question. In Surat Singh (Dead) v. Siri Bhagwan and others (2018) 4 SCC 562 this Court has pointed out the contours of the powers of High Court under the proviso to sub-section (5) of Section 100 CPC as under:-*
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> *"21……. The proviso to sub-section (5), however, also recognises the power of the High Court to hear the appeal on any other substantial question of law which was not initially framed by the High Court under sub-section (4). However, this power can be exercised by the High Court only after assigning the reasons for framing such additional question of law at the time of hearing of the appeal".*
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> *22. We are clearly of the view that the proviso to sub-section (5) of Section 100 CPC is not intended to annul the other requirements of Section 100 and it cannot be laid down as a matter of rule that irrespective of the question(s) formulated, hearing of the second appeal is open for any other substantial question of law, even if not formulated earlier…"*

(iv) This Court pointing out the principle laid down in *Surat Singh* case, set aside the judgment of the High Court on the ground of violation of mandatory procedure prescribed under section 100 CPC, and remanded the matter to the High Court for deciding the appeal afresh on merits in accordance with law [Refer: *Vijay Arjun Bhagat and others v. Nana Laxman Tapkire and others*, (2018) 6 SCC 727].

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[11] AIR 2019 SC 1178/(2019) 19 SCC 413

(v) This Court in *Ramakrishnan Kadinhipally & Ors. v. P.T. Karunakaran Nambiar*[12] criticized the High Court for remanding a case to the trial court without proper justification, especially when concurrent findings of fact existed. It reiterated that in second appeals under Section 100 CPC, the High Court should not interfere with concurrent findings unless there is a substantial question of law. The relevant paragraphs read as under:

> *"**7.** By the impugned judgment and order and without answering anything on the substantial questions of law framed/formulated, absolutely in a casual manner, the High Court has allowed the Second Appeal and has set aside the concurrent findings recorded by both the courts below and thereafter has remanded the matter to the learned trial Court permitting the original plaintiff to amend the plaint and pray for fixation of the boundary.*
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> ***9.** Having heard learned counsel for the respective parties and having gone through the impugned judgment and order passed by the High Court, we are constrained to observe that the manner in which the High Court has dealt with the Second Appeal under Section 100 of the CPC is not appreciable at all. From the impugned judgment and order passed by the High Court, it appears that the High Court has exercised the powers as if the High Court was deciding the Writ Petition under Article 226 of the Constitution of India. The High Court has not appreciated at all that the High Court was deciding the Second Appeal under Section 100 of the CPC and that too against the concurrent findings of fact by both the courts below, which were, as such, on appreciation of evidence on record. Under the circumstances, the impugned judgment and order passed by the High Court is unsustainable.*
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> ***11.** At the cost of repetition, it is observed that the High Court was dealing with the Second Appeal under Section 100 CPC and the concurrent findings recorded by both the courts below which were on appreciation of evidence on record. Neither at the stage of deciding the suit nor even before the first Appellate Court even such a prayer was made to amend the plaint, which is now permitted by the High Court, despite the fact that earlier in the suit during the course of trial, the plaint was*

[12] 2023 SCC OnLine SC 323

amended. Under the circumstances also, the impugned judgment and order passed by the High Court is unsustainable.

12. *Even for remand, a specific case is to be made out as per Order 41 Rule 23, 23A and 25 of the CPC. No findings are recorded by the High Court that the case falls within Order 41 Rule 23, 23A and 25 of the CPC and the matter is required to be remanded to the learned trial Court on setting aside the concurrent findings of fact recorded by both the courts below. The High Court has mechanically remanded the suit, which is wholly impermissible.*

13. *Even the substantial questions of law framed by the High Court, while admitting the second appeal, which are reproduced herein above cannot be said to be as such substantial questions of law at all. The same are on questions of fact. Under the circumstances, the impugned judgment and order passed by the High Court quashing and setting aside the concurrent findings recorded by both the courts below, while exercising the powers under Section 100 CPC, is unsustainable.*

14. *In view of the above and for the reasons stated above, the present Appeal succeeds. The impugned judgment and order passed by the High Court is hereby quashed and set aside. The judgment and decree passed by the learned trial Court confirmed by the first Appellate Court is, hereby, ordered to be restored."*

13. In the present case, evidently, the first suit *viz.*, O.S.No.851 of 1965 seeking maintenance was decreed on 26.08.1965 in favour of the plaintiffs / Respondent Nos.6 and 7 herein. Consequently, the suit properties were attached for realizing the maintenance amount. In the court auction, the suit 'A' schedule property was purchased by Karivarada Gowdar and the sale was confirmed *vide* certificate (Ex.B1) dated 25.09.1970 and possession was also handed over to him on 22.12.1970. Patta book (Ex.B5) was also issued in his favour. Subsequently, the suit 'A' schedule property was purchased by Respondent Nos.8 to 10 and thereafter, by Respondent No.11 and thereafter, by the appellants herein. It is also to be noted here that the subsequent purchasers filed two separate suits for

permanent injunction restraining the defendants therein from interfering with their possession of the suit ‘A’ schedule property and the same also came to be decreed, in their favour. It is significant to point out at this juncture that though the father of Respondent Nos.1 and 2 and the husband of Respondent No.3 *viz*., Dasappa Gowdar was party to the said suit, he did not contest the suit effectively. After his death, Respondent Nos.1 to 3 were duly impleaded in the execution proceedings and a court guardian was also appointed for the minor daughter of the said Dasappa Gowdar. However, they did not take any immediate steps to set aside the decree passed in the first suit. It was only in 1982, approximately seventeen years after the first suit that Respondent Nos.1 to 3 filed the second suit *viz*., O.S.No.257 of 1982 seeking to set aside the decree in O.S.No.851/1965, partition of the suit 'A' and 'C' schedule properties, permanent injunction, *etc*. As such, it cannot be contended that Respondent Nos.1 to 3 were unaware of the first suit and upon becoming aware of it, they filed the second suit after a period of 17 years. Further, in the second suit, Respondent Nos.1 to 3 did not specify when they became aware of the decree passed in the first suit.

14. In the second suit *viz*., O.S.No. 257 of 1982, Respondent Nos.1 to 3 predicated their case on allegations of fraud and collusion between the defendants, claiming a lack of knowledge about the earlier proceedings. They further asserted that Respondent No.3 was in mental distress following her husband's death and that they were in continuous possession of the suit properties.

15. The trial court, after a comprehensive examination of the evidence, both oral and documentary, concluded that Respondent Nos.1 to 3 are not entitled to any relief in the suit. On the pivotal issue of limitation, the trial court was of the view that the action has to be taken to set aside the decree within a period of three years, as per Article 59 of the Limitation Act, whereas the suit was filed after a period of seventeen years and hence, the relief sought by Respondent Nos.1 to 3 to set aside the decree passed in the first suit was hit by the doctrine of limitation. The relevant paragraphs of the judgment passed by the trial Court are reproduced below for ready reference:

> *"12. From the date of Ex.A1 about 17 years later, the relief which is sought for, to set aside the above said decree is hit by limitation is contended on the defendant's side. The defendants did not mention specifically in the written statement filed by them. If as per law a case is to filed within the stipulated period this court has the power to dismiss the case, and even though the counter argument is not made in this regard, the court has the power to dismiss the suit, as mentioned in the proviso of Section 3 of Limitation Act was appointed out by the Learned Counsel for the defendants. Therefore, considering the proviso of Section 3 of the above said Act, it is necessary to peruse whether the relief sought for by the plaintiff to set aside the order passed in O.S.No.851 of 1985 is made within the stipulated period, in this case.*
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> *13. As mentioned in the Article 59 of the Limitation Act, the action has to be taken to set aside the Ex.A 1 decree, within a period of three years. That is within three years from the date of Ex.A1 the plaintiffs would have taken action for setting aside the above said decree. I find that it is pertinent to mention the clause on page 634 of The Limitation Act, by B.B. Mitra. It is as follows:*
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> *12. Burden of proof. If a suit is prima facie within the time allowed by the Article then if the defendant takes a plea that the suit is barred by limitation then it is for the defendant to prove it. Where, however, on the averments of the plaint the suit seems to barred it is for plaintiff to make out the circumstances to prove that the suit is not barred by limitation. Mere assertion in the plaint that the plaintiff acquired knowledge on particular date does not by itself establish that fact and if on averments made in the plaint it is found that the plaintiff had acquired knowledge beyond the period prescribed by this Article then the suit will be barred. If the suit*

is prima facie within the time but the defendant takes plea that the plaintiff was aware of the necessary facts to file the suit prior to the date when he admits in the plaint such knowledge of facts then it is for the defendant to allege and prove that the plaintiff had such knowledge prior to the period from which the time begins to run.

It is mentioned in the plaint that the 3rd plaintiff is not aware of the Ex.Al decree and the proceedings after this. It is not mentioned in the plaint as to when for the first time, they knew about the Ex.A1 decree and the proceedings initiated thereafter. In this connection, evidence was not let in by P.A.l in this court. As already stated by me, this suit has been filed about 17 years later from the date of the date of decree. It is the onus of the plaintiff to prove that the relief prayed for to set aside the decree was filed within the stipulated time. Only through Dasappa Gowdar, the plaintiffs claim the right over the suit A and C schedule properties. As already stated by me the above said Dasappa Gowdar is aware of the Ex.Al decree is revealed through the copy of the order Ex.A2. Even the above said Dasappa Gowdar did not take any action to set aside the decree Ex.Al. Thereafter, after the demise of Dasappa Gowdar, in the execution proceedings, these plaintiffs were impleaded as legal heirs is revealed through Ex.B1. Therefore, the averment that the 3rd plaintiff is not aware of the above said Ex.Al decree and the proceedings thereafter, as mentioned in the plaint is not proved. Per contra, it is proved through the documents in this case, that the plaintiffs are aware of the above said proceedings. Therefore, I hold that the relief as prayed for by the Plaintiff to set aside the exparte Decree Ex.Al is hit by the doctrine of limitation…"

16. The First Appellate Court also, upon a thorough analysis, affirmed the judgment of the trial Court. Especially, with respect to the conclusion reached by the trial Court on the aspect of limitation, the First Appellate Court was of the opinion that the plaintiffs had slept over for 17 years and had chosen to come to the court violating the mandate under Section 59 of the Limitation Act and therefore, the suit was hopelessly barred by limitation as laid down by the trial Court. The relevant paragraphs of the First Appellate Court's judgment are extracted below for ready reference:

"15.The 4th Defendant Sundarammal and her daughter Vennila have instituted a suit against samiappan the 3rd Defendant herein in O.S.851/65 for maintenance and also for creating a charge over the suit properties. The decree obtained by them in the above suit by the 4th Defendant and 5th Defendant was marked as Ex.A1. Thereafter it is found that the Defendants 4 and 5 took the Execution Proceedings against Samiappan and in his presence the sale of the A- schedule property was ordered by the Court under Exs.A-2 and A-3. It will have to be noted that the 3rd Defendant Samiappan had contested the Execution Application filed by his wife and daughter. After the demise of Rangan Gowder, the father of Samiappan, Kempakkal the wife of Rangan Gowder and Subbammal the daughter of Rangan Gowder were impleaded as legal representatives of Rangan Gowder as found from Ex.A.4. It would be pertinent to note that the said Kempakkal is the 1st defendant and the said Subbammal is the 2nd Defendant in this suit. It is not as if the Plaintiffs were in the dark, while the proceedings for payment of maintenance were taken by Sundarammal and Vennila Madammal in the name of Thoddammal and Rajamani and Santhamani, the Plaintiffs herein have been impleaded as legal representatives of Dasappan on his demise in the Execution Proceedings as found in Ex.B-1 to B-3 would establish that the A-schedule property which was brought for sale for 4th and 5th Defendants was knocked down by one Kerivaratha Gounder.

17. Dasappan the husband of the 3rd Plaintiff has contested the Execution Petition filed by Sundaramal and Vennila by engaging a counsel for him. It is not as if that the parties had remained ex parte throughout the proceedings as contended by the Plaintiffs. Ex.B-1 would reveal that Rajamani and Santhamani the minor children of Dasappan were represented by a Court guardian appointed by the Court, Subbammal the 2nd Defendant also has been added as a party to the Execution Proceedings on the demise of Rangae Gowder apart from his wife 1st Defendant having been impleaded as a party to the suit. The plaintiffs and Defendants 1 to 3 were aware of the proceedings taken by Sundarammal and Vennila.

19. D.W.2 in his cross-examination would state that in their families the eldest female member would be called as Thoddammal. No wonder Madammal being the oldest female member in the family of Dasappan has been so-called as Thoddammal. Further Ex.B-9 the returned cover would show that the postman has made and endorsement after enquiry that the addressee viz. Thoddammal, wife of Dasappan was out of Station. If Thoddammal was not the wife of Dasappan, the Postman would not have stated that Thoddammal wife of Dasappan has gone out. Further it is not the case of the Plaintiffs that any other wife was there for Dasappan. Therefore, accepting the explanation given by D.W.2 the Court comes to the conclusion that Madammal was called as Thoddammal also and that, therefore, it is false to say that Madammal was not aware of the proceedings taken by Sundarammal. Further when Rajamani and Santhamani were represented by Court guardian the court guardian could not have acted affectively unless Madammal gave proper instructions to contest the Execution proceeding taken by

sundrammal. It is highly ridiculous to state that Madammal was totally out of picture.

21. The execution Court while executing the decree obtained in O.S.No.851/65 has chosen to sell away the A Schedule property to satisfy the maintenance decree obtained by 4th and 5th Defendants through Court auction in the presence of all the Defendants herein. When the coparceners have not taken steps to partition the share of Samiappan at the time of the Execution proceeding taken by Defendants 4 and 5 the Execution Court did not find the other way except bringing one of the schedule of properties for sale to satisfy the maintenance decree. I do not find any lacuna in the above execution proceedings. The plaintiffs have not cared to mention when they came to know of the maintenance decree obtained by 4th and 5th Defendants and the sale of the A-schedule property in Court auction. Nor have they stated anything about it in their evidence. For about 17 years, the Plaintiffs have slept over and have chosen to come to the court violating the mandate found under Sec.59 of the limitation Act. Therefore, the suit is hopelessly barred by limitation as laid down by the Trial Court…"

17. Thereafter, when the concurrent findings were sought to be challenged by way of second appeal, the High Court at the time of admission on 30.03.1998, formulated the following substantial question of law:

"Whether the Court below was right in justifying the sale of the entire A schedule properties, which were admittedly joint family properties and in which the second respondent has only 1/3rd share, which alone would be liable to satisfy the decree for maintenance obtained by his wife and daughters viz., respondents 3 and 4."

Upon hearing the arguments of the counsel for both sides, the High Court formulated the following additional substantial question of law:

"Whether the lower Court was right in its conclusion that the suit is barred under Section 59 of the Limitation Act, when the appellants had no knowledge of the sale proceedings till 1981, when they published the notice under Ex.A.6?"

Without deciding the substantial question of law involved in the second appeal, the High Court only considered the additional substantial question of law,

observing that both the Courts failed to frame any issue in respect of the limitation, though held that the suit was barred by limitation. Accordingly, the High Court allowed the second appeal by setting aside the judgments passed by the Courts below and remitted the matter to the trial Court for a fresh trial with a direction to frame additional issue regarding limitation, let in evidence and decide the matter after giving due opportunity to both sides, within a period of six months. The relevant paragraphs of the High Court's judgment are extracted for ready reference:

> *"10. In this regard, it is relevant to extract the issues framed by the trial Court as follows:*
>
> *1) Whether the Plaintiff is entitled to the relief to the Judgement in O.S.851/2005?*
> *2) Whether the Plaintiffs are entitled to 5/12 Shares in suit 'A' and 'C' schedule properties?*
> *3) Whether the Plaintiffs are entitled to the relied of permanent injunction as prayed in the plaint?*
> *4) Whether the Plaintiffs have paid sufficient correct fees?*
> *5) What other reliefs are the Plaintiffs entitled to?*
>
> *Though, the trial Court discussed in respect of the above issues and also about the question of limitation, dismissed the suit as the suit itself barred by limitation.*
>
> *11. The first appellate Court also framed the points for consideration as follows:*
>
> *"1. Whether the plaintiffs are entitled to the relief of cancellation of the decree in O.S.No.851/65 on the file of the District Munsif Court, Coimbatore?*
> *2. Whether the plaintiffs are in possession and enjoyment of the A schedule and consequently whether they are entitled to permanent injunction as prayed for by them?"*
>
> *The first appellate Court also discussed about the limitation and concluded that the suit is filed after 17 years as such, violation of provision under Section 59 of the Limitation Act and the suit is hopelessly barred by Limitation Act and dismissed.*

12. Admittedly, both the Courts below did not frame any issue in respect of the limitation. As rightly pointed out by the learned Senior Counsel appearing for the plaintiffs, both the Courts failed to frame any issue in respect of limitation, though both the Court hold as the suit is barred by limitation. The first appellate Court also confirmed the judgment and decree passed by the trial Court without framing point for limitation for determination in the first appeal. Therefore this Court necessarily has to interfere with the finding of the Courts below. Accordingly, this Court answered only on the additional substantial question of law formulated by this Court in favour of the plaintiffs and against the defendants.

13. In fine, the second appeal stands allowed and the judgment and decree passed by Courts below are set aside. However considering the facts and circumstances, the suit is remitted back to the trial Court for fresh trial by framing additional issues in respect of limitation and let in evidence on those aspects and decide the matter after giving due opportunity to both sides in respect of the issue. Further the trial Court is directed to complete the trial within a period of six months from the date of receipt of the entire bundle. It is made clear that the trial court is directed to conduct the trial uninfluenced by the observation made by this Court while deciding the case. There is no order as to costs."

18. In our opinion, the judgment of the High Court is unsustainable, applying the legal principles as stated above that once the High Court is satisfied that the appeal involves a substantial question of law, such question shall have to be framed and finally decided on merits in accordance with the procedure laid down under section 100 CPC. The High Court, has failed to decide the substantial framed at the time of admission and went to decide, only the additional substantial question of law, framed at the time of hearing. The first suit was decreed on 26.08.1965 and the auction purchaser got the suit 'A' schedule property on 22.12.1970 and thereafter, the appellants herein purchased the same from the subsequent purchaser by name R.S.Ramaswamy / Respondent No.11; despite the fact that the decree and sale were within the knowledge of the Respondent Nos.

1 to 3, they have thwarted the right of the purchasers over the suit 'A' schedule property by filing second suit *viz*., O.S. No.257 of 1982, that too, after a period of 17 years and the decision of the High Court remanding the matter to the trial Court for a fresh trial on the limitation aspect, without deciding the same on merits, by holding that a separate issue ought to have been framed is unsustainable and will certainly prolong the litigation without any useful purpose.

19. The object of framing an issue is to determine the material point of disputes between the parties, for the purpose of adjudication. Issues can be framed on a question of law or fact or a mixed question of law and fact. The decision on the issue settles the *lis* in favour of either of the parties. A distinct issue is to be formed when a material proposition of law or fact is affirmed by one party and denied by another. Also, there is no necessity to frame an issue, when the parties are not at dispute on a particular fact or law. At times, despite pleadings, when a specific issue is not framed, but when both the parties to the *lis* have let in evidence and rendered their arguments on a point, the decision on which is intrinsically connected to the main issue, then the Court is bound to render a finding on the point of dispute before deciding the connected issue, one way or another. In that case, it becomes the duty of the Court to analyze the evidence before it and render a decision on all disputed questions of fact or law, directly or indirectly in issue, so as to put an end to the *lis*. The Limitation Act,1963 restricts the right of a litigant by prescribing a time limit within which action must be

initiated. Its object is to provide a time or period, within which, the action has to be initiated. The object of the Act is not to destroy a vested right available in law but to prevent indefinite litigation and therefore, only prescribes a period for initiation of the litigation. This Court has described the object of the Limitation Act, 1963 in the following decisions:

(i) Bharat Barrel & Drum Mfg. Co. Ltd. and Another v. Employees State Insurance Corporation[13]:

> *"7. …… The object of the Statutes of Limitations is to compel a person to exercise his rights of action within a reasonable time as also to discourage and suppress stale, fake or fraudulent claims. While this is so, there are two aspects of the Statutes of Limitation the one concerns the extinguishment of the right if a claim or action is not commenced with a particular time and the other merely bar the claim without affecting the right which either remains merely as a moral obligation or can be availed of to furnish the consideration for a fresh enforceable obligation. Where a statute prescribing the limitation extinguishes the right, it affects substantive right while that which purely pertains to the commencement of action without touching the right is said to be procedural".*

(ii) N. Balakrishnan v. M. Krishnamurthy[14]

> *"that the Limitation Act is based upon public policy which is used for fixing a life span of a legal remedy for the purpose of general welfare. It has been pointed out that the Law of Limitation are not only meant to destroy the rights of the parties but are meant to look to the parties who do not resort to the tactics but in general to seek remedy. It fixes the life span for legal injury suffered by the aggrieved person which has been enshrined in the maxim 'interest reipublicae ut sit finis litium' which means the Law of Limitation is for general welfare and that the period is to be put into litigation and not meant to destroy the rights of the person or parties who are seeking remedy. The idea with regards to this is that every legal remedy must be alive for a legislatively fixed period of time".*

[13] AIR 1972 SC 1935
[14] (1998) 7 SCC 123

20. Limitation, as we generally know is a mixed question of fact and law. However, there is no hard and fast rule that every question of limitation is to be treated as a mixed question of fact and law. In cases, where the action is initiated after several years after the right to sue accrued, without any pleadings to explain the reasons for delay or as to when the fraud was discovered, the question of limitation is to be treated as a question of law. A recourse may be had to Order VI Rules 4 and 10 CPC, which mandates that specific particulars would have to be given in the pleadings. Once such a plea is raised in the pleadings, then the burden lies on the person to prove that the delay was due to any plausible reason and it is always well within the knowledge of the other party to contend and prove that the opposite party had prior knowledge about the disputed fact and that his right to sue or defend had also accrued by that date. Even in the absence of specific pleadings regarding the limitation in the plaint or a plea of defense, there is a bounden duty on every civil Court to ascertain as to whether the *lis* has been initiated within the time prescribed under law, even if the parties to the *lis* had not raised any objections. This right flows from the mandate of Section 3 of the Limitation Act, 1963. A useful reference may be had to the judgment of this Court on this aspect, in *V.M. Salgaocar and Bros. v. Board of Trustees of Port of Mormugao and another*[15], wherein, it was held as follows:

> *"20. The mandate of Section 3 of the Limitation Act is that it is the duty of the court to dismiss any suit instituted after the prescribed period of limitation irrespective of the fact that limitation has not been set up as a defence. If a suit is*

[15] (2005) 4 SCC 613

ex facie barred by the law of limitation, a court has no choice but to dismiss the same even if the defendant intentionally has not raised the plea of limitation.

21. This Court in Manindra Land & Building Corpn. Ltd. v. Bhutnath Banerjee [(1964) 3 SCR 495 : AIR 1964 SC1336] held (AIR para 9):
"Section 3 of the Limitation Act enjoins a court to dismiss any suit instituted, appeal preferred and application made, after the period of limitation prescribed therefor by Schedule I irrespective of the fact whether the opponent had set up the plea of limitation or not. It is the duty of the court not to proceed with the application if it is made beyond the period of limitation prescribed. The Court had no choice and if in construing the necessary provision of the Limitation Act or in determining which provision of the Limitation Act applies, the subordinate court comes to an erroneous decision, it is open to the court in revision to interfere with that conclusion as that conclusion led the court to assume or not to assume the jurisdiction to proceed with the determination of that matter."

In cases, where the pleadings are silent, then it becomes the duty of the Court to ascertain from the evidence and the overall facts of the case, as pleaded by either party, and to render a finding on limitation where the question of limitation is to be treated as a question of law, since the Court cannot entertain frivolous or stale claims. It is also apropos to reiterate the settled position of law that a question of law can be raised at any stage.

21. We have in earlier paragraph discussed the object of framing the issues. We also held that there could be several points directly or indirectly connected with the main issue that has been framed. In such cases, when the larger issue that has been framed is wide enough to cover different points of disputes within it, there is no necessity to frame a specific issue on that aspect. Further, when the parties go to trial with the knowledge that a particular point is at *lis*, had full opportunity to let in evidence, they cannot later turn back to say that a specific

issue was not framed. All that is required under law, is for the Court to render a finding on the particular fact or law in dispute, on the facts of the case. However, we make it clear that such evidence, in the absence of pleadings, cannot permit either of the parties to make out a new case. It is pertinent to mention here that the Courts are vested with powers to go into the question of law, touching upon either the limitation or the jurisdiction, even if no plea is raised and not in cases, where facts have to be pleaded and evidence has to be let in. The Civil Procedure Code and the law of limitation, being procedural laws, meant to assist the Courts in the process of rendering justice, cannot curtail the power of the Courts to render justice. Procedural laws after all are handmaid of justice. What is to be seen is whether any irregularity arising from a failure to follow procedure has caused serious prejudice to the parties. It is not to be forgotten that the process of adjudication is to discern the truth.

21.1. It will be useful to refer to certain judgments of this Court on violation of procedural law, which are as follows:

(i) *Sardar Amarjit Singh Kalra (Dead) by L.Rs. & Others v. Pramod Gupta (Smt.) (Dead) by L.Rs. and Others*[16]:

> *"26. Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice....."*

[16] MANU/SC/1214/2002 : (2003) 3 SCC 272 (Constitutional Bench)

(ii) *Kailash v. Nanhku and Ors.*[17]:

> *"28. All the Rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of Code of Civil Procedure or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice. The observations made by Krishna Iyer, J. in Sushil Kumar Sen v. State of Bihar [MANU/SC/0028/1975 : (1975) 1 SCC 774] are pertinent: (SCC p. 777, paras 5-6)*
>
> *The mortality of justice at the hands of law troubles a judge's conscience and points an angry interrogation at the law reformer.*
>
> *The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist Rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act ex debito justitiae where the tragic sequel otherwise would be wholly inequitable. ... Justice is the goal of jurisprudence -- processual, as much as substantive.*
>
> *29. In State of Punjab v. Shamlal Murari [MANU/SC/0494/1975 : (1976) 1 SCC 719 : 1976 SCC (L&S) 118] the Court approved in no unmistakable terms the approach of moderating into wholesome directions what is regarded as mandatory on the principle that: (SCC p. 720)*
>
> *"Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice. In Ghanshyam Dass v. Dominion of India [MANU/SC/0006/1984 : (1984) 3 SCC 46] the Court reiterated the need for interpreting a part of the adjective law dealing with procedure alone in such a manner as to subserve and advance the cause of justice rather than to defeat it as all the laws of procedure are based on this principle."*

[17] MANU/SC/0264/2005 : (2005) 4 SCC 480 (3 Judge Bench)

(iii) Sugandhi (Dead) by LRs & Others v. P. Rajkumar[18]:

> *"9. It is often said that procedure is the handmaid of justice. Procedural and technical hurdles shall not be allowed to come in the way of the court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party, courts must lean towards doing substantial justice rather than relying upon procedural and technical violation. We should not forget the fact that litigation is nothing but a journey towards truth which is the foundation of justice and the court is required to take appropriate steps to thrash out the underlying truth in every dispute. Therefore, the court should take a lenient view when an application is made for production of the documents under Sub-rule (3)."*

22. In the present case, the trial Court though had not framed a specific issue on "limitation", the same could very well fall under the broader issue. The question of limitation can be encompassed within the larger question determined by the First Appellate Court for determination. The failure of the trial Court and the First Appellate Court to formulate a separate issue, in the view of this Court, is not fatal to the judgment rendered by them and has not caused any prejudice to the parties. Further, the trial Court, in the performance of its duty, mandated under Section 3 of the Limitation Act, 1963, has taken up the question of limitation and upon perusal of the overall pleadings and evidence, has rightly decided the same. Therefore, we do not agree with the decision of the High Court in remanding the matter to the trial Court, that too after this length of time, when all materials were available before it.

[18] MANU/SC/0792/2020 : (2020) 10 SCC 706

23. As already indicated above, the concurrent findings of the Courts below were sought to be challenged before the High Court. It is a general rule that High Court will not interfere with the concurrent findings of the Courts below. In the present case, both the trial Court and the First Appellate Court, after detailed analysis of the oral and documentary evidence let-in by the parties, categorically held that the suit was hopelessly barred by limitation. We also find that the evidence produced would abundantly make it clear that Dasappa Gowdar and thereafter, Respondent Nos.1 to 3 were well aware of the earlier proceedings and the decree passed in the first suit. The auction purchaser's title was confirmed by court orders, and subsequent transfers were properly registered and recorded. Therefore, Respondent Nos.1 to 3, who have knowingly slept over their right to challenge the sale and allowed further rights to flow, cannot later question the sale of larger extent of share in an unpartitioned property. We also do not find any plausible reasons for delay. It is reiterated at this juncture that limitation is a matter of statute and must be strictly enforced, more so when the earlier transaction or sale is well within the knowledge of the parties. This principle assumes greater significance in the present case, where the delay extends to seventeen years for filing the suit, despite the fact that they were arrayed as respondents/Judgment Debtors in the execution proceedings. Furthermore, protection of *bona fide* purchasers for value is a significant consideration, and any disturbance to their rights or titles after such a long period, would create uncertainty in property transactions and undermine the sanctity of court sale.

Therefore, we are of the view that the High Court was not justified in remanding the matter to the trial Court for fresh trial solely with respect to the issue of limitation; and that, the Courts below have rightly held that the suit was barred by limitation and Respondent Nos.1 to 3 are not entitled for any relief.

24. In such view of the matter, the appeal is allowed. The impugned judgment of the High Court is set aside. The judgment and decree of the trial court dismissing the suit, as affirmed by the First Appellate Court, are restored. Parties shall bear their own costs throughout.

25. Connected Miscellaneous Application(s), if any, shall stand disposed of.

……J.
[J. B. Pardiwala]

……J.
[R. Mahadevan]

NEW DELHI;
APRIL 09, 2025.